



BRIEFING

Charging international students for MIQ

Date:	27 January 2021	Priority:	High
Security classification:	In Confidence	Tracking number:	2021-2054

Action sought		
	Action sought	Deadline
Hon Chis Hipkins Minister for COVID-19 Response	<p>Note that under the current MIQ Charges Regulations, we believe a significant proportion of the 1,000 bachelor level and above students and some of the 250 PhD and postgraduate students approved to enter New Zealand as class exceptions are not liable to pay MIQ fees</p> <p>Agree to amend the MIQ Charges Regulations to either:</p> <p>Option 1 - Make all temporary class visa holders liable for standard MIQ fees (Recommended)</p> <p>Option 2 – Apply the standard MIQ fees specifically to students</p> <p>Option 3 - Apply the higher fee (that applies to critical workers) specifically to students</p> <p>Forward this briefing to the Minister of Immigration</p>	28 January 2021

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Privacy of natural persons	Policy Manager, Systems and Strategy, MIQ Unit	Privacy of natural persons	✓
	Policy Advisor		

The following departments/agencies have been consulted
Immigration New Zealand (MBIE), Immigration Policy (MBIE), Ministry of Education, Ministry of Justice, The Treasury, Ministry of Foreign Affairs and Trade

Minister's office to complete:

- Approved
- Noted
- Seen
- See Minister's Notes

- Declined
- Needs change
- Overtaken by Events
- Withdrawn

Comments



BRIEFING

Charging international students for MIQ

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Purpose

To provide you with advice on giving effect to charging international students for managed isolation and quarantine (MIQ) and seek your agreement to amend the MIQ Charges Regulations to make all international students liable to pay fees.

Recommended action

The Ministry of Business, Innovation and Employment (MBIE) recommends that you:

International students

- a **Note** that in September and December 2020, the Ministerial group considering class exceptions approved 250 PhD and postgraduate students, and 1,000 bachelor level and above students to enter New Zealand
Noted
- b **Note** that the 250 PhD and postgraduate students have now started to arrive, and the 1,000 bachelor level and above students are scheduled to arrive in staggered cohorts from April 2021
Noted
- c **Note** that when Ministers agreed the class exception for the 1,000 bachelor level and above students, it was intended that they would pay the standard MIQ charges
Noted
- d **Note** that under the current MIQ Charges Regulations, we believe that a significant proportion of the 1,000 bachelor level and above students and some of the 250 PhD and postgraduate students approved to enter New Zealand as class exceptions are not liable to pay MIQ fees
Noted
- e **Note** that to implement Ministers' intention that all international students will pay MIQ fees requires a change to the Regulations
Noted
- f **Agree** to amend the MIQ Charges Regulations to either:

Option 1 – Make all temporary class visa holders liable for standard MIQ fees
(Recommended)

Agree / Discuss / Disagree

Option 2 – Apply the standard MIQ fees specifically to students

Agree / Discuss / Disagree

Option 3 – Apply the higher fee (that applies to critical workers) specifically to students

Agree / Discuss **Disagree**

- g **Note** that MBIE is undertaking a broader regime review of MIQ fees and will report back in late February 2021

Noted

Travellers transiting through New Zealand under a Trans-Tasman Safe Travel Zone

- h **Note** that further work with Immigration New Zealand about how the border exception for people entering MIQ before onwards travel to Australia will be operationalised has revealed that most of those individuals travelling to Australia through New Zealand will not be liable for MIQ charges

Noted

- i **Agree** to amend the MIQ Charges Regulations to ensure that people entering MIQ in New Zealand prior to travel to Australia (as part of the Safe Travel Zone) are liable for MIQ charges

Agree / Discuss / Disagree

Minor and technical change to support safe travel

- j **Note** that you agreed to progress a minor and technical change to the Regulations to ensure that exemptions from MIQ fees for New Zealanders continue to operate in the context of a safe travel zone [briefing 2021-1096 refers]

Noted

- k **Agree** to either:

- i) Progress this minor and technical change to the Regulations on the original fast timeframe proposed (Cabinet decisions on 1 March 2021 and into force 28 days later)
- ii) Progress this minor and technical change with the changes to the MIQ Charges Regulations related to liability for international students to pay MIQ fees (Cabinet decisions on 22 March 2021 and into force on 25 March 2021)

Agree / Discuss / Disagree

Timing

- l **Note** that any change to the Regulations may capture some of the 250 PhD and postgraduate students and should capture the 1,000 bachelor level and above students arriving from April 2021

Noted

- m **Forward** this briefing to the Minister of Immigration

Agree / Disagree



Dora Livas
Policy Manager, Systems and strategy
MIQ Unit, MBIE

27 / 01 / 2021



Hon Chris Hipkins
Minister for COVID-19 Response

29 / 01 / 2021

Background

1. In September and December 2020, the Ministerial group considering class exceptions approved 250 PHD and postgraduate students, and 1,000 bachelor level and above students to enter New Zealand.
2. The PHD and postgraduate students have now started to arrive¹. The bachelor level students are scheduled to arrive in staggered cohorts from April 2021, and will book places in MIAS as they become available².
3. When agreeing the class exceptions for the 1,000 bachelor level and above students, it was Ministers' intention that the students would pay standard MIQ charges, which was detailed in the Ministry of Education Submission [briefing 2021-1626 refers]. On 14 January 2020, you announced the border exception for returning international students, and confirmed that international students "will need to book their space through the allocation system and will be billed the standard charges for managed isolation".
4. International students are temporary entry class visa holders and so under the COVID-19 Response (Managed Isolation and Quarantine Charges) Regulations 2020 (the MIQ Charges Regulations) they are liable to pay standard MIQ fees (\$3,100 including GST).
5. However, the current Regulations state that temporary entry class visa holders are not liable for fees if they:
 - a. were ordinarily resident in New Zealand at 19 March 2020; and
 - b. left New Zealand on or before 19 March 2020.
6. We understand that a significant proportion of the 1,000 bachelor level and above students due to arrive from April 2020 may be returnees who were ordinarily resident in New Zealand³ and left the country before 19 March 2020, and so they would not be liable to pay fees under the current Regulations.
7. Some of the PhD and postgraduate 250 cohort may also not be liable to pay fees if they meet the criteria in the Regulations. If they are unduly issued an invoice they can contact us demonstrating that they meet the criteria in the Regulations to be exempt from the fees and request that this is rectified. Information on who is liable for MIQ fees is communicated to arrivals and is on the MIQ website. We are working with Immigration New Zealand to identify which of the 250 PhD and postgraduate students may not be liable to pay fees. Ministry of Education will also contact education providers who are working with these students to update the information to students⁴.
8. Implementing Ministers' intention that all international students will pay MIQ fees requires a change to the Regulations.

Changing the MIQ Charges Regulations to make students liable

9. The fees settings were designed to balance the protected rights of New Zealand citizens and permanent residents to enter New Zealand with the need to have an economically sustainable public health response to COVID-19. Cabinet intended that the charges would be

¹ As at 21 January 2021, 12 students had entered New Zealand under this exception.

² Expected arrivals (subject to space in MIAS): 300 in April-May; 300 in May-June; 400 in June-July

³ Ordinarily resident means having lived in New Zealand for 183 days (six months) in a total of the previous 12 months.

⁴ Providers have indicated they will pay half the MIQ costs.

kept under regular review. To date we have made one significant change to the fees that apply to critical workers.

10. Since the Regulations were made, MIQ functions have changed and costs have increased. The international environment suggests MIQ will be needed for the foreseeable future and it is appropriate that more people entering the country meet some of the costs of their MIQ stay. Making international students liable to pay some of the costs of their MIQ stay will reduce the cost for the Government and New Zealand taxpayers.
11. There are a number of ways to amend the Regulations to make all international students liable for MIQ fees. These include:
 - a. Option 1 – Make all temporary class visa holders liable for standard MIQ fees (Recommended)
 - b. Option 2 – Apply the standard MIQ fees specifically to students
 - c. Option 3 – Apply the higher fee (that applies to critical workers) specifically to students.

Option 1: Make all temporary class visa holders liable for standard MIQ fees (Recommended)

12. We recommend that the Regulations are changed to provide that all temporary class visa holders are liable to pay the standard MIQ fees (\$3,100 including GST).
13. As noted above, the current Regulations state that temporary visa class holders are liable for standard MIQ fees unless they:
 - a. were ordinarily resident in New Zealand at 19 March 2020; and
 - b. left New Zealand on or before 19 March 2020.
14. The intent when the Regulations came into force in August 2020 was that if you were ordinarily resident in New Zealand before New Zealand's borders closed and you were caught overseas, you should be able to return to New Zealand without there being a financial barrier.
15. As more time has passed, we have revisited this rationale against the costs being incurred by the Government to fund MIQ and consider that there is a strong case for a more balanced way of sharing the costs. It is also likely that many people in this category who were previously "stuck" overseas due to the lockdown would have already returned without incurring a fee.
16. Groups who are captured in the temporary class visa holder category include:
 - a. Visitor visa holders, including tourists and family members visiting New Zealand;
 - b. Student visa holders;
 - c. Work visa holders; and
 - d. Limited visas⁵.
17. The impact of this option would be that people captured in these groups who meet the ordinarily resident criteria (refer paragraph 13 above) would become liable to pay MIQ fees. Under the current Regulations, this would include visitors who were family members or

⁵Limited visas let you enter New Zealand for a particular purpose only e.g. to go to a wedding, funeral, get medical treatment, or to visit a sick or injured relative.

student visa holders who meet the ordinarily resident criteria if they were able to enter New Zealand under the current border settings.

18. We also note that temporary class visa holders do not have the same legal right as New Zealand citizens or permanent residents to return to New Zealand under the New Zealand Bill of Rights Act 1990 (i.e. section 18 - every New Zealand citizen has the right to enter New Zealand) or Immigration Act 2009. The standard fee is largely subsidised by the Government and so there is also an argument that it would not create an unreasonable financial barrier for entry into New Zealand⁶.

Option 2: Apply the standard MIQ fees specifically to students

19. This option would mean amending the Regulations so that student visa holders are liable for the standard MIQ fees (\$3,100 including GST). The other groups of temporary class visa holders (see para 16 above) would continue to not be liable for fees if they met the ordinarily resident criteria in the Regulations.
20. This option may raise concerns from education providers and student advocacy bodies that students are being treated differently to other temporary class visa holders. For those students that were ordinarily resident in New Zealand, there is an argument that they have been similarly impacted to other temporary visa holders (e.g. work visa holders who were also out of the country when the borders closed) as they already had accommodation, social and financial commitments in New Zealand.
21. This option is not recommended as there is not a strong policy argument for differentiating students from other temporary class visa holders.

Option 3: Apply the higher fee (that applies to critical workers) specifically to students

22. This option would allow the government to recover closer to the actual costs of MIQ (\$5,520 including GST) and provide consistency with how we charge 'other critical workers'. This higher fee was introduced to reflect that employers of critical workers in this category gain direct economic benefit from bringing overseas working through the border.
23. However, unlike critical workers, students are not arriving for the purpose of working for a specific employer and therefore do not have an employer to pay the MIQ fees.
24. We do not recommend this approach, at this stage. MBIE is currently scoping out a broader fees review and will consider this option as part of that work. We will report back to you on that review by late February 2021.

Eligibility for a fees waiver

25. Under the current Regulations, the Chief Executive of MBIE may waive, in whole or in part, the payment of charges in cases of undue financial hardship or in other special circumstances.
26. The COVID-19 Public Health Response Act 2020 provides that there is appropriate provision to grant relief from the payment of prescribed charges in circumstances where payment of the charges would cause undue financial hardship. This provision does not solely apply to New Zealand citizens or permanent residents.
27. When the Regulations were last amended in December 2020, waivers for 'other critical workers' were removed on the basis that they have an employer involved who receives the direct economic benefit of having them in the country. Students and other temporary visa

⁶ The standard fee at \$3,100 (including GST) is just over half the cost being charged for critical workers at \$5,520 (including GST).

holders who have not entered to work should not be treated the same, and so we do not consider that it is appropriate to remove their eligibility to apply for waivers. However, we note that as students are required to show evidence that they have \$20,000 to cover the costs of living, then this could impact on the likelihood of receiving a waiver on the basis of financial hardship.

Other regulatory changes you could progress

Charging people entering MIQ in New Zealand before travelling onto Australia as part of a Trans-Tasman Safe Travel Zone

28. The Trans-Tasman Safe Travel Zone Arrangement provides for travellers who have an ultimate destination of one country being able to travel through the other without staying in MIQ.
29. On 18 January 2021, MBIE officials provided you with advice on how to manage demand from people travelling to Australia and looking to quarantine in New Zealand on their way [briefing 2021-1906 refers]. This included proposing in the first instance a new border category of transiting Australians and Australian visa holders, capped initially at 600 passengers for three months from commencement, as a means to manage demand on MIQ capacity from the 40,000 Australians reportedly stranded offshore. The intention has always been to charge travellers who enter MIQ before travelling on to Australia.
30. Further work with Immigration New Zealand on how a border exception would be created has revealed that MIQ charges would not currently apply to Australian citizens and permanent residents transiting through New Zealand. The charges in the Regulations only apply to Australians who are ordinarily resident in New Zealand⁷ and temporary entry class visa holders. Most of the Australians transiting will not be ordinarily resident, and under immigration settings Australian citizens and permanent residents are granted residence class visas on arrival, not temporary entry class visas⁸.
31. We propose to amend the Regulations so that people, including Australian citizens and permanent residents, travelling to Australia through New Zealand are liable for MIQ charges at the standard rates of \$3,100. We noted in the 18 January 2021 briefing that officials will consider increasing fees for Australian passengers later as part of the broader fees review.
32. Subject to your agreement, MBIE officials will work with the Ministry of Foreign Affairs and Trade to seek policy agreement and authorisation to instruct Parliamentary Counsel Office (PCO) to draft the amendments in your next paper to Cabinet on the Trans-Tasman Safe Travel Zone, which we understand you intend to take on 15 February 2020. The amendments will then progress with the indicative timetable proposed for international student charges (see next steps below).

Minor and technical changes to support safe travel zones

33. We recommend that minor and technical changes to support safe travel zones are progressed on the same timeline as our proposed changes to the Regulations relating to international students.

⁷ They are treated like New Zealanders and are liable for charges if they left New Zealand before 11 August 2020 and are visiting New Zealand for less than 90 days, or they left New Zealand after the Regulations came into force.

⁸ The charging situation of any New Zealand citizens and residence class visa holders seeking to enter with the intention of travelling on to Australia will not be affected by this proposal.

34. In January 2021, you agreed to instruct Parliamentary Counsel Office to amend the Regulations to ensure travel within a Safe Travel Zone does not affect a person's exempt status [briefing 2021-1906 refers].
35. The change would ensure that exemptions from MIQ fees for New Zealanders continue to operate in the context of a safe travel zone. For example, a New Zealander should be exempt from MIQ charges if they are returning home for more than 90 days, even if they plan to travel to a safe travel zone country within those 90 days.
36. The technical issue arises now that the one-way Cook Islands travel arrangement is operating and is also relevant for Australia COVID-Safe Travel Zone. However, in practice the numbers of people affected by the technical inconsistency are likely to be very small.
37. Given the minor and technical nature of these changes, we originally recommended progressing the amendments on a fast timeline. However, given the substantive regulations changes now required on a longer timeframe and the small number of people likely to be affected by this technical inconsistency, you may wish to progress this minor and technical change on the same timetable as our proposed changes to the Regulations (see para 42 below).
38. The original timeframe proposed for minor and technical change is below.

Action	Date
Instructions to PCO	26 January 2021
LEG paper and draft Amendment Regulations to Minister's Office for consultation (7 working days)	9 February 2021
Lodge paper and draft Regulations with Cabinet Office	18 February 2021
Consideration by LEG	25 February 2021
Cabinet / Executive Council	1 March 2021
Regulations come into force	28 days after Executive Council or sooner if Cabinet agrees to waive 28 day rule

Next steps

39. If you agree to amend the Regulations, below is an indicative timeline for Cabinet policy decisions.

Action	Date
Draft Cabinet paper to Minister for COVID-19 Response	29 January 2021
Lodge paper for Cabinet Business Committee (CBC)	3 February 2021
CBC agrees policy	10 February 2021
Cabinet	15 February 2021
Drafting instructions issued to PCO	16 February 2021
PCO starts drafting	4 weeks
Cabinet (LEG) paper and draft Regulations to Minister's Office for consultation (2 weeks)	25 February 2021
Cabinet (LEG) paper and Regulations lodged with Cabinet Office	11 March 2021
Cabinet Legislation Committee	18 March 2021
Cabinet and Executive Council	22 March 2021
Gazette and Regulations come into force	25 March (subject to Cabinet waiving 28 day Rule)

40. To ensure that the changes capture the 1,000 bachelor level and above students, the Regulations will need to come into force before they start to arrive in April 2021. The changes may capture some of the 250 PhD and postgraduate students (as we understand that some of them have started to arrive into the country).
41. It is proposed that Cabinet decisions are timed to coincide with Cabinet decisions relating to the Trans-Tasman Safe Travel Zone (on 22 March 2021). If you agree to progress the technical and minor change to support safe travel zones (paras 34 – 39 above), then Cabinet will consider them at the same time.
42. If you agree to amend the Regulations, we will provide you with a draft Cabinet paper on Friday 29 January 2021, for your consideration.